tract, including a transition payment, and because applying the cap to transition payments "ensures that the cap has a meaningful role in the statute." *Id.* at 13a-14a.

ARGUMENT

The court of appeals' decision is correct and does not conflict with the decision of any other court of appeals. Indeed, no other court of appeals has had an occasion to construe the particular statutory provision at issue here, which concerns one-time retrospective payments under a program in which even ongoing monthly payments are now scheduled to terminate on September 30, 2005. In addition, the Secretary's interpretation of the statute is not only reasonable, but is the interpretation required by its text and structure and is, in any event, the most natural reading of the statute. Further review by this Court is therefore not warranted.

1. As the Secretary argued in the court of appeals (Pet. App. 8a-9a), the conclusion that transition payments are subject to the statutory cap is not only a permissible interpretation of the statute, but also the one required by its plain text.

Subsection (b), entitled "Payments," directs the Secretary to offer to enter into contracts with dairy farmers, under which those farmers "receive payments on eligible production." See 7 U.S.C. 7982(b). Ensuing subsections provide for two types of such payments: periodic, monthly payments commencing with the month in which the contract was entered into through September 30, 2005, see 7 U.S.C. 7982(e) and (g)(1), and a lump-sum retroactive ("transition") payment for the period from December 1, 2001, through the month proceeding the month in which the contract was entered into, see 7 U.S.C. 7982(h). Subsection (c), entitled "Amount," es-

tablishes a single formula for calculating the payments "under this section," which includes subsection (h) and its provision for transition payments. 7 U.S.C. 7982(c). Indeed, subsection (h) itself provides that transition payments are to be made "in accordance with the formula specified in subsection (c)." 7 U.S.C. 7982(h). Subsection (c), in turn, provides that the "payment quantity" to be used in calculating the amount of payments is the quantity "established under subsection (d)." 7 U.S.C. 7982(c)(1). Paragraph (2) of subsection (d) contains the cap on the payment quantity. It provides that the "payment quantity" for all producers on a single dairy farm "during the months of the applicable fiscal year for which the producers receive payments under subsection (b) of this section shall not exceed 2,400,000 pounds." 7 U.S.C. 7982(d)(2). Because this cap is expressly incorporated by reference in subsection (c), and because subsection (h) expressly provides that transition payments are to be made in accordance with the formula in subsection (c), the cap is applicable to transition payment by the plain language of the statute.

Petitioners contend (Pet. 5) that the reference in 7 U.S.C. 7982(d)(2) to "payments under subsection (b)" limits the cap to periodic monthly payments made after the contract is entered into, and excludes the lump-sum retroactive payment for the transition period. But petitioners point to nothing in the Act to support that contention. They assert only that the reference to payments under subsection (b) "implies" that there are payments that are not under that subsection. That is not so. As explained above, subsection (b) provides for the Secretary to offer contracts to dairy farmers under which those farmers will receive payments on eligible produc-

tion, and it does not draw any distinction between periodic monthly payments and retroactive lump-sum payments. Moreover, subsection (h) in fact confirms that the contract is the basis for making the lump-sum transition payment, because it applies only to farmers who "enter into a contract under this section." 7 U.S.C. 7982(h). Thus, the negative implication petitioners seek to draw from the reference to "subsection (b)" in 7 U.S.C. 7982(d)(2) is without merit and cannot in any event overcome the express terms of the statute.

If there were any lingering doubt, subsection (g) further supports the Secretary's interpretation. Subsection (g), which is entitled "Duration of contract," provides that "[e]xcept as provided in * * * subsection (h)," any contract entered into "under this section" shall cover eligible production from the first month of the contract through September 30, 2005. The quoted introductory phrase makes clear that, for purposes of making the lump-sum transition payment, the period prior to the contract month is covered by the contract. That provision clearly rests on the proposition that payments under subsection (h) are payments under the contract, and thus covered by subsection (b) as well. See 7 U.S.C. 7982(g). If Congress had instead intended to limit applicability of the cap to periodic monthly payments, it would have applied the cap to "payments under subsection (e)," which pertains specifically to monthly payments, rather than to "payments under subsection (b)," which refers to payments under the contracts generally.[2]

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[2] Contrary to the petitioners' assertion and the suggestion of the court of appeals, the Secretary's interpretation does not render the reference to "subsection (b)" in subsection (d)(2) superfluous. See Pet. 6-7; Pet. App. 10a. Rather, the reference to the operative portion of

For the foregoing reasons, the plain text of Section 7982 subjects transition payments to the statutory cap. At the very least, that is the most natural reading of the statute.

2. Even if it is assumed, arguendo, that the statutory text does not compel the Secretary's conclusion, the court of appeals correctly sustained the Secretary's regulations as a reasonable interpretation of the statute. As the court explained (Pet. App. 13a), the statutory language is at least amenable to the Secretary's construction: because transition payments under subsection 7982(h) result only upon entering into a contract under subsection 7982(b), they reasonably can be considered "payments under subsection (b)" subject to the production cap in subsection 7982(d)(2). In addition, as the court of appeals also found, the Secretary's construction ensures that the statutory cap on production will have meaningful effect. Under petitioners' preferred construction, any dairy farmer could evade the cap by delaying entering into a contract until immediately prior to the program's expiration, at which point it could then seek a retroactive transition payment without regard to the statutory cap. The result would be a disbursement equivalent to the sum of the prospective monthly payments if there were no statutory cap at all. The Secretary's construction forecloses circumvention of the program in this manner and ensures that the cap, which Congress expressly wrote into the statute, serves

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Section 7982 provides without qualification for "payments" (not merely monthly payments) to a person who enters into a contract with the Secretary. The fact that Congress referred to that particular subsection, rather than to Section 7982 as a whole, renders the reference more precise, not superfluous.

a meaningful purpose. It is thus a reasonable interpretation of the statute requiring judicial deference.

3. Petitioners do not challenge the court of appeals' conclusion that the Secretary's interpretation of the statute is a reasonable one. Rather, they contend that the court of appeals misapplied *Chevron* in even reaching that point of the analysis. Petitioners' contentions are without merit and provide no basis for further review.

In *Chevron*, this Court established a two-step framework through which a court should review an agency's construction of a statute it administers. The first step requires the reviewing court to determine whether Congress has directly spoken to the question at issue. If the legislative intent is clear, that is the end of the matter, "for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chevron*, 467 U.S. at 842-843. If, however, "the statute is silent or ambiguous with respect to the specific issue," the court must uphold the agency's action as long as it is based on a permissible construction of the statute. *Id.* at 843.

In this case, the court of appeals first found that neither the text of the statute nor its history, structure, or purpose evinced a clear congressional intent as to the precise question presented: whether transition payments are subject to the production cap. See Pet. App. 9a, 10a. The court then considered whether the Secretary's interpretation was reasonable, and deemed it "eminently" so. *Id.* at 13a.

a. Petitioners contend that the court of appeals departed from step one of *Chevron* by rejecting an interpretation required by the unambiguous text of the stat-

ute. See Pet. 12-13. This argument mischaracterizes the decision below. Contrary to petitioners' assertion, the court of appeals found textual infirmities in *both* parties' proposed interpretations of the statute. The court noted that although in its view the Secretary's interpretation rendered one phrase superfluous,[3] petitioners' proposed interpretation is not compelled by the text of the statute, because it is irreconcilable with statutory text stating that all contract payments are subject to the statutory cap and that transition payments are available only to farmers with whom the Secretary contracts. Pet. App. 9a-10a.

The court thus did not, as petitioners argue, reject the plain language of the statute. Instead, having identified problems with each party's reading of the statutory text, it found that the statute is ambiguous. The court of appeals' searching and thorough inquiry into the plain language of the statute is entirely consistent with step one of *Chevron* and other decisions of this Court. Indeed, the court of appeals complied fully with the directives of the only case petitioners cite in support of their contention that the court erred in its textual analysis. As petitioners note, *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438 (2002), instructs a reviewing court to "begin with the language of the statute," ceasing its inquiry if "the statutory language is unambiguous." Pet. 12 (quoting *Sigmon Coal Co.*, 534 U.S. at 450). The court of appeals first turned to the language of the statute, found ambiguity in the text, and accordingly continued, rather

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[3] As explained above, the court of appeals was wrong in believing that the reference to "subsection (b)" is superfluous under the Secretary's interpretation. See p. 9 n.2, *supra*.

than ceased, its analysis, thus properly conforming to the very precedent to which petitioners appeal.

b. Petitioners also contend that the court of appeals erred under *Chevron* in its consideration of the legislative history, structure, and purpose of the statute. Pet. 13. This Court has stressed that when the words of a statute are unambiguous, judicial inquiry is complete. *Connecticut Nat'l Bank* v. *Germain ex rel. O'Sullivan's Fuel Oil Co.*, 503 U.S. 249, 253-254 (1992). The Court, however, has not foreclosed resort under *Chevron* to other traditional tools of statutory construction when the text of the statute does *not*, on its face, conclusively yield a clear meaning. Indeed, the Court considered legislative history in *Chevron* itself. See 467 U.S. at 851-853, 862. Furthermore, the Court has in subsequent invocations of *Chevron* consulted legislative history and other traditional tools of statutory construction in instances where the statutory text was not dispositive. See, *e.g.*, *General Dynamics Land Sys., Inc.* v. *Cline*, 540 U.S. 581, 600 (2004); *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 142-143 (2000); *Babbitt* v. *Sweet Home Chapter of Communities*, 515 U.S. 687, 704-708 (1995); *Pauley* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 697-698 (1991); *Pension Benefit Guar. Corp.* v. *LTV Corp.*, 496 U.S. 633, 648-650 (1990); *Japan Whaling Ass'n* v. *American Cetacean Soc'y*, 478 U.S. 221, 233-240 (1986).

Here, the court of appeals first determined that the text of the statute is unclear and only then considered legislative history and other tools of statutory construction. Its approach was thus fully consistent with the decisions of this Court.

c. Contrary to petitioners' contention (Pet. 9), there is no significant disagreement among the courts of appeals concerning the role legislative history may play in *Chevron* analysis. The courts of appeals generally recognize that courts cannot ordinarily employ legislative history under *Chevron* to support a *departure* from an interpretation that the plain language of the statute would otherwise compel. See, *e.g.*, *Succar* v. *Ashcroft*, 394 F.3d 8, 31 (1st Cir. 2005) ("[W]here the plain text of the statute is unmistakably clear on its face, there is no need to discuss legislative history."); *United Transp. Union* v. *Surface Transp. Bd.*, 183 F.3d 606, 613 (7th Cir. 1999) (unambiguous statutory text is controlling at step one of *Chevron*, without regard to legislative history); *Legal Envtl. Assistance Found., Inc.* v. *EPA*, 118 F.3d 1467, 1475 (11th Cir. 1997) (same).

In addition, the courts of appeals generally agree that consideration of legislative history may be appropriate at step one of *Chevron* when a statute's text does not conclusively yield a clear meaning. Indeed, many of the opinions petitioners cite support that very principle. See, *e.g.*, *Succar*, 394 F.3d at 31 (permitting legislative history to be considered at step one of *Chevron* "where appropriate to discern and/or confirm legislative intent"); *Coke* v. *Long Island Care at Home, Ltd.*, 376 F.3d 118, 127 (2d Cir. 2004) (reviewing legislative history at step one of *Chevron* where the statutory issue concerned the meaning of "a vague term with no obvious plain meaning"); *Director, OWCP Programs* v. *Sun Ship, Inc.*, 150 F.3d 288, 291 (3d Cir. 1998) (authorizing legislative history review in *Chevron* inquiry if statutory text is ambiguous); *Dominion Res., Inc.* v. *United States*, 219 F.3d 359, 365 (4th Cir. 2000) (in *Chevron* in-

quiry, legislative history is "the first tool of statutory construction a court utilizes to determine congressional intent when statutory language is unclear"); *Bolen* v. *Dengel*, 340 F.3d 300, 308 (5th Cir. 2003) (legislative history employed when construing legislative intent in first step), cert. denied, 541 U.S. 959 (2004); *Ragsdale* v. *Wolverine Worldwide, Inc.*, 218 F.3d 933, 936 (8th Cir. 2000) (*Chevron* step one permits examination of legislative history when statutory language is ambiguous), aff'd, 535 U.S. 81 (2002); *American Rivers* v. *FERC*, 187 F.3d 1007, 1016 (9th Cir. 1999) (legislative history considered at step one of *Chevron* where "statutory language evinces no specific congressional directive"), opinion amended in part, 201 F.3d 1186 (9th Cir. 2000); *Seneca-Cayuga Tribe* v. *National Indian Gaming Comm'n*, 327 F.3d 1019, 1042 (10th Cir. 2003) (applying legislative history at step one where text did not indicate clear meaning), cert. denied, *Ashcroft* v. *Seneca-Cayuga Tribe*, 540 U.S. 1218 (2004); *Davis* v. *Southern Energy Homes, Inc.*, 305 F.3d 1268, 1278 (11th Cir. 2002) (looking to both text and legislative history to determine intent at step one), cert. denied, 538 U.S. 945 (2003); *American Bankers Ass'n* v. *National Credit Union Admin.*, 271 F.3d 262, 271 (D.C. Cir. 2001) (legislative history examined at step one of *Chevron* where court was "[f]aced with two plausible interpretations" of the statutory text).[4]

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[4] The Seventh Circuit has stated in dictum in a footnote that "[t]he first step of *Chevron* focuses on the text of the statute, leaving legislative history for the second step." *United States* v. *Dierckman*, 201 F.3d 915, 923 n.12 (2000). In support of that aside, the *Dierckman* court quoted *Bankers Life & Casualty Co.* v. *United States*, 142 F.3d 973 (7th Cir.), cert. denied, 525 U.S. 961 (1998), in which the court remarked that although the Seventh Circuit "has examined legislative

The decision below is consistent with those decisions of other courts of appeals. The court of appeals, after "[f]ocusing on the statutory language," determined that Congress's intent "is not stated clearly in the language of the statute." Pet. App. 10a. Only then did the court consider whether it could resolve this textual ambiguity by examining the legislative history, structure, and purpose of the statute. *Id.* at 10a-13a. Moreover, because the court below found that none of those other tools of statutory construction established a clear congressional intent on the statutory question at issue, the question whether a reviewing court may resort to legislative history at step one of the *Chevron* analysis had no bearing on the outcome of this case. The court of appeals proceeded to the second step of *Chevron*, just as it would have if it had not first considered the statute's legislative history, structure, and purpose and found them unilluminating. And at step two, the court found the Secretary's interpretation to be "eminently reasonable," a

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history during the first step of *Chevron*, we now *seem* to lean toward reserving consideration of legislative history * * * until the second *Chevron* step." *Id.* at 983 (emphasis added and citation omitted).

Petitioners also assert (Pet. 11) that the decision below is inconsistent with the Eight Circuit's decision in *United States* v. *Sabri*, 326 F.3d 937 (2003), aff'd, 541 U.S. 600 (2004). *Sabri* is completely inapposite. The Eighth Circuit there cautioned against using legislative history to justify a departure from unambiguous statutory text. *Id.* at 943. The instant case, however, concerns the use of legislative history where the court has determined that the statutory text, standing alone, is unclear. Moreover, *Sabri* concerned judicial interpretation of a criminal statute, not judicial review of an agency's decision under *Chevron*. In the context of a *Chevron* inquiry, the Eighth Circuit has sanctioned the use of legislative history at step one to discern congressional intent. See *Ragsdale*, *supra*.

determination petitioners do not dispute. Thus, not only do petitioners fail to present any circuit conflict or significant legal issue concerning the particular statute at issue here. They also fail to raise any concrete issue under *Chevron* that is of significance to this case or that would warrant this Court's review in any event.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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(4)

No. 04-1361

In the Supreme Court of the United States

MICHAEL FULLENKAMP, et al.,
Petitioners,

v.

MIKE JONANNS, in his capacity as Secretary of the United States Department of Agriculture,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE DAIRY PRODUCERS OF NEW MEXICO AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Sixth Circuit accepted an agency's interpretation of a statute that rendered part of the statute superfluous, even though the Petitioners' alternative reading gave meaning to all the words, and even though the Petitioners were "able to explain how their position fits into the overall structure of the statute and furthers the statute's purpose." Is the Sixth Circuit's approach appropriate under a *Chevron* step one analysis?

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INTEREST OF AMICUS CURIAE[1]

The Dairy Producers of New Mexico ("DPNM") is a grassroots agriculture association for New Mexico and West Texas dairy producers. The DPNM is an advocate for dairy producers and acts as a governmental liaison for the dairy producers on the local, state, and national levels.

New Mexico has approximately 190 dairies. New Mexico has been ranked seventh in the nation for milk production. The average New Mexico dairy produced 33,681,655 pounds of milk during 2004, worth an estimated 5.4 million dollars.

SUMMARY OF ARGUMENT

Amicus DPNM endorses the Petitioners' reason for granting certiorari, *i.e.*, that the Sixth Circuit's *Chevron* step one analysis illustrates a conflict with decisions of this Court and other circuits regarding the method of statutory construction. The DPNM submits this Amicus brief to underscore two points:

First, the Court should grant certiorari to make clear that, when an interpretation of a statute exists that gives meaning

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[1] Pursuant to Supreme Court Rule 37.6, Amicus states that no counsel for any party authored this brief in whole or in part, and that no entity other than Amicus made a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief. Letters evidencing such consent have been filed with the Office of the Clerk of this Court. See Sup. Ct. R. 37.3.

to all the words, a court may not adopt an agency interpretation rendering part of the statute superfluous.

Second, the Sixth Circuit's use of legislative history under step one of the *Chevron* analysis conflicts with the Tenth Circuit, in addition to the circuits discussed in the Petitioners' brief.

REASONS FOR GRANTING CERTIORARI

The Sixth Circuit expressly concluded that the agency's interpretation of the statute at issue in this case "does render the phrase 'subsection (b)' superfluous." *Fullenkamp v. Veneman*, 383 F.3d 478, 483 (6th Cir. 2004). The Sixth Circuit nonetheless blessed that interpretation, and rejected the Petitioners' countervailing interpretation which gave meaning to the statute in its entirety. The Sixth Circuit did so, even though it also concluded that the Petitioners were "able to explain how their position fits into the overall structure of the statute and furthers the statute's purpose." *Id.* That was plain error, and this Court should grant certiorari to instruct all the circuits on the point.

This case is governed by the familiar analytical framework set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842, 81 L.Ed.2d 694, 104 S.Ct. 2778 (1984). When reviewing an agency's interpretation of a statute it administers under the *Chevron* analysis, a court engages in the following two-step inquiry: (1) if "Congress has directly spoken to the precise question at issue," then the courts and agency "must give effect to the unambiguously expressed intent of Congress," or (2) if Congress has "explicitly left a gap for the agency to fill," the agency's regulation is "given controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute."

Household Credit Servs. v. Pfennig, 541 U.S. 232, 239, 158 L.Ed.2d 450, 459, 124 S.Ct. 1741, 1747 (2004) (*quoting Chevron*, 467 U.S. at 842-844) (internal citations omitted). Although *Chevron* sets forth the general approach, the issues in this case focus on much needed clarification of the analytical framework for a step one analysis.

Petitioners' writ deals with an income support program for dairy farmers set forth in the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002). The program provides for federal payments to milk producers when a price index falls below a certain level.

Two types of payments are established under the program: *First*, monthly payments under subsection (b) that begin when a dairy farm enters into a contract with the Secretary of Agriculture, but are subject to an annual cap under subsection (d)(2). *Second* – "In addition to any payment that is otherwise available under this section" – a lump-sum transition payment under subsection (h) for production between December 2001 and the month the dairy farm enters into the contract with the Secretary of Agriculture. While subsection (d)(2) expressly limits the milk production on which the *monthly* payments may be received, subsection (h) imposes no cap on the one-time, lump-sum, transition payment – unless one construes this *second* type of payment as one also made "under subsection (b)." *See Fullenkamp v. Veneman*, 383 F.3d 478, 479 (6th Cir. 2004).

The main question in this case is therefore whether these lump-sum transition payments are "payments under subsection (b)." Petitioners assert that they are not. The only way to construe the matter otherwise is for the court to read the phrase "subsection (b)" right out of the statute, and the Sixth Circuit did just that.

I. THE COURT SHOULD GRANT CERTIORARI IN ORDER TO GIVE EXPLICIT GUIDANCE REGARDING COMPETING TEXTUAL INTERPRETATIONS OF A STATUTE UNDER STEP ONE OF THE *CHEVRON* ANALYSIS.

When dealing with statutory construction, a court begins by "determining whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340, 136 L.Ed.2d 808, 117 S.Ct. 843 (1997), *citing United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240, 103 L.Ed.2d 290, 109 S.Ct. 1026 (1989). The plain language of the statutory provision dealing with a transition payment states:

> ***In addition to any payment that is otherwise available*** under this section, if the producers on a dairy farm enter into a contract under this section, the Secretary shall make ***a payment*** in accordance with the ***formula specified in subsection (c)*** on the quantity of eligible production of the producer marketed during the period beginning on December 1, 2001, and ending on the last day of the month preceding the month the producers on the dairy farm entered into the contract.

7 U.S.C. § 7982(h) (emphasis added). Thus, a transition is calculated in accordance with the "formula specified in subsection (c)."

Turning to subsection (c), the plain language states in relevant part that "[p]ayments to a producer under this section shall be calculated by multiplying...the payment quantity for the producer during the applicable month established under ***subsection (d)***...." 7 U.S.C. § 7982(c)(1) (emphasis added). The "payment quantity" is described in subsection (d) as

follows: "Subject to ***paragraph (2)***, the payment quantity for a producer during the applicable month under this section shall be equal to the quantity of eligible production marketed by the producer during the month." 7 U.S.C. § 7982(d)(1) (emphasis added).

The parties part ways on the issue of whether the limitation on payment quantity described in subsection (d)(2) applies to a transition payment. Subsection (d)(2) sets out the following limitation on the quantity of produced milk eligible for payment:

> The payment quantity for all producers on a single dairy operation during the months of the applicable fiscal year for which the producers receive payments ***under subsection (b)*** shall not exceed 2,400,000 pounds.

7 U.S.C. § 7982(d)(2) (emphasis added). In turn, subsection (b) mandates that "[t]he Secretary shall offer to enter into contracts with producers on a dairy farm located in a participating State under which the producers receive ***payments*** on eligible production." 7 U.S.C. § 7982(b) (emphasis added).

Petitioners assert that the single lump-sum transition payment allowed under section (h) does not constitute "payments" referenced under subsection (b). *Fullenkamp*, 383 F.3d at 482. Therefore, the limitation on the payment quantity set forth in subsection (d)(2) does not apply to a transition payment. Instead, the limitation only applies to the *monthly payments* after the time the dairy producer enters into a contract with the Secretary.

Meanwhile, Respondent argues that a transition payment is "payments under subsection (b)." *Id.* 383 F.3d at 482. Respondent bases this argument on the notion that "dairy farmers receive transitional payments only if they sign contracts, as authorized in subsection (b)." *Id.* Therefore, Respondent argues that subsection (b) is a reference to the "contracts in general," and the limitation on payment quantity described in subsection (d) at paragraph (2) applies to transition payments. *See Id.* at 482-483.

When the Sixth Circuit tackled this maze of statutory references, it explicitly concluded that Respondent's statutory interpretation of the plain language rendered words superfluous. In that court's words:

> As the defendant points out, transition payments are received only if the dairy farmers enter into contracts and, therefore, such payments can be seen to be payments under subsection (b). At the same time, as noted by the plaintiffs, ***this interpretation does render the phrase "subsection (b)" superfluous***.

Id. at 483 (emphasis added). Despite the recognized flaw in Respondent's statutory construction, the Sixth Circuit decided to proceed with a full *Chevron* analysis, and it ultimately rejected Petitioner's textual interpretation that gave effect to all of the words.

The Court should take this opportunity to give explicit guidance regarding competing textual interpretations of a statute under step one of the *Chevron* analysis. When two competing textual interpretations are at issue and only one gives effect to all the words in a statute, the Court should require the acceptance of that interpretation that gives effect to all the words. No further analysis would be needed or

would be warranted under step one of the *Chevron* analysis. At a minimum, such a rule should hold sway when, as here, the proffered interpretation "fits into the overall structure of the statute and further the statute's purpose." *Fullenkamp*, 383 F.3d at 483.

The foundation for such a rule rests on the notion that a statute must be read so as to not render words superfluous. "The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183, 158 L.Ed.2d 338, 345, 124 S.Ct. 1587, 1593 (2004) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992)). From this principle flows a "longstanding canon of statutory construction that terms in a statute should not be construed so as to render any provision of that statute meaningless or superfluous." *Beck v. Prupis*, 529 U.S. 494, 506, 120 S.Ct. 1608, 1617, 146 L.Ed.2d 561, 572 (2002). "Thus, our inquiry begins with the statutory text, and ends there as well if the text is unambiguous." *BedRoc*, 541 U.S. at 183, 124 S.Ct. at 1593, 158 L.Ed.2d at 345.

With these canons of statutory construction in mind, when confronted with two competing statutory interpretations of the text, the implicit directive has been to accept the one that produces an unambiguous result and gives effect to all of the words. The Court should now make such a directive explicit and prevent unnecessary further analysis under *Chevron*§. Ending the *Chevron* analysis at this juncture comports with other statutory construction cases decided by this Court

For example, in *Clark v. Martinez*, this Court was faced with applying the "canon of constitutional avoidance in statutory interpretation." *Id.*, __ U.S. __, 125 S.Ct. 716, 724